

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 851 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MUSABHAI FAKIRMOHMED SUMRA

Appearance:

MR KC SHAH, ADDITIONAL PUBLIC PROSECUTOR for Petitioner
NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 29/03/2000

ORAL JUDGEMENT

1. The complainant, Food Inspector has taken the sample of Kajudraksh Icecream from the respondent accused for the purpose of analysis after following the due procedure as prescribed under the Act. After receiving the report from the Public Analyst it was found that the

sample was not according to prescribed standards. Therefore, after obtaining necessary sanction the complaint was lodged against the respondent accused for the offence punishable under Section 7 and 16 of the

Prevention of Food Adulteration Act (PFA Act for short) in the court of the Learned J.M.F.C. Bhuj-Kutch. The case was registered being criminal case no.1335/85. The Learned J.M.F.C. after recording the evidence of the prosecution witnesses and after recording the plea of the respondent accused, acquitted the respondent accused by his judgment and order dated 23rd May, 1991. The State has, therefore, preferred this acquitted appeal with leave.

2. When this appeal came up for final hearing before this court, learned APP submitted that the trial court held that the sanction has not been given after applying mind and that the required procedure for taking of sample and preservation thereof has not been followed. The respondents have been served with the notice but they have not entered appearance as can be seen from the Board. Before any fresh notice of final hearing is contemplated, this court had an occasion to go through the evidence adduced before the trial court. In the first place, it can be noticed that as per the report of the Public Analyst, the sample of Kajudraksh Icecream (Dry Fruit Icecream) is reported to be not conforming to prescribed standards. On going through the report, it would appear that the only violation of the standard is in respect of milk fat. The required standard of milk fat in such Icecream is stated to be minimum 8.0% whereas the find of milk fat in the sample is 7.07%. Thus, milk

fat is short by 0.03%. Apart from the fact that milk fat is short by negligible percentage, it has appeared in the evidence that the Food Inspector, Mr. Dodia, the complainant has failed to state some material facts about the taking of sample in the Panchnama Exhibit 56. The Learned Magistrate has highlighted the same in the impugned judgement and order, for example, the taking of the sample with the aid of the table spoon in question is not described in the Panchnama. The Panchnama is also silent with regard to whether the table spoon was cleaned and not made dry. It is also silent about the fact that the table spoon that was used for the purpose of taking of sample was taken from the shop of the accused or from

the accused. This variation between the evidence of the complainant and the Panchnama has been highlighted by the Learned Magistrate for rendering acquittal giving benefit of doubt to the accused on this ground. Mr. K.C. Shah, learned APP has taken the court through the relevant evidence in this respect. Upon appreciation of such evidence, the finding of fact rendered by the Learned Magistrate can hardly be faulted. In this view of the matter, it would not be necessary to go to other grounds of acquittal.

3. Hence, bearing in mind the facts of the case, this appeal is not required to be entertained. The same is accordingly dismissed.

(M.S. Parikh, J.)

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